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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

James Theodore Sharkey,

Petitioner,

v.

James Dzurenda, et al.,

Respondents.

Case No.: 2:20-cv-00088-APG-EJY

**Order Dismissing Action**

Petitioner James Sharkey has submitted a petition for a writ of habeas corpus. I dismiss this action because Sharkey did not pay the filing fee, nor did he submit an application to proceed *in forma pauperis* with a financial certificate and a copy of his inmate account statement, as required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2.

A preliminary review of the petition shows that the dismissal would not affect the timeliness of any subsequently commenced action. The state district court entered a judgment of conviction on March 20, 2018. *State v. Sharkey*, Case No. C-17-321917-1.<sup>1</sup> The Nevada Court of Appeals decided the appeal from that judgment on March 18, 2019.<sup>2</sup> *Sharkey v. State*, Case No. 75474 & 75474-COA.<sup>3</sup> Sharkey filed a post-conviction habeas corpus petition in the state

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<sup>1</sup> <https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11759386>. All docket reports were generated on January 15, 2020.

<sup>2</sup> Sharkey alleges that the decision occurred on April 12, 2019. ECF No. 1-1, at 1. The Nevada Supreme Court issued the remittitur on that date. While issuance of the remittitur is significant for the state one-year period of limitation of Nev. Rev. Stat. § 34.726(1), it is not important for determining the finality of a judgment of conviction under the federal one-year period of limitation of 28 U.S.C. § 2244(d)(1)(A). In this case, the expiration of the time to petition the Supreme Court of the United States for a writ of certiorari governs the finality of the judgment. *Jimenez v. Quarterman*, 555 U.S. 113, 119-20 (2009). That time expired after Sharkey filed his state post-conviction petition. Consequently, the one-year period was tolled under 28 U.S.C. § 2244(d)(2) even before it started.

<sup>3</sup> <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=45712&combined=true>.

1 district court on April 26, 2019. *Sharkey v. Dzurenda*, Case No. A-19-793757-W.<sup>4</sup> The state  
2 district court denied the petition. Sharkey appealed the denial. That appeal still is pending in the  
3 Nevada Supreme Court. *Sharkey v. Director*, Case No. 79294, consolidated with Case  
4 No. 80001.<sup>5</sup> Under the terms of 28 U.S.C. § 2244(d)(1) and (2), no time has run on the federal  
5 one-year period of limitation.

6 Reasonable jurists would not find this conclusion to be debatable or wrong, and I will not  
7 issue a certificate of appealability.

8 I THEREFORE ORDER the clerk of the court to file the petition for a writ of habeas  
9 corpus.

10 I FURTHER ORDER the clerk of the court to send Sharkey a blank form for an  
11 application to proceed *in forma pauperis* for incarcerated litigants.

12 I FURTHER ORDER that this action is **DISMISSED** without prejudice to Sharkey's  
13 commencement of a new action in which he either pays the filing fee in full or submits a  
14 complete application to proceed *in forma pauperis*, accompanied by a signed financial certificate  
15 and a statement of his inmate account.

16 I FURTHER ORDER that a certificate of appealability will not issue.

17 I FURTHER ORDER that that the clerk shall add Aaron Ford, Attorney General for the  
18 State of Nevada, as counsel for respondents.

19 I FURTHER ORDER the clerk to electronically serve upon the respondents a copy of this  
20 order and the petition. No response is necessary.

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23 <sup>4</sup> <https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11952671>.

<sup>5</sup> <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=56123>.

1 I FURTHER the clerk of the court to enter judgment accordingly and close this action.

2 DATED this 16th day of January, 2020.

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5 ANDREW P. GORDON  
6 UNITED STATES DISTRICT JUDGE  
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